UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RICHARD BLUMENTHAL, Attorney General of Connecticut, et al.,	:	
Plaintiffs,	:	
	:	
-vs-	:	Civ. No. 3:01cv53 (PCD)
	:	
WALKER DIGITAL CORPORATION,	:	
Defendant.	:	

RULING ON MOTION TO ALTER OR AMEND JUDGMENT

Plaintiffs move to alter or amend the judgment dismissing the complaint and for reconsideration of the dismissal pursuant to FED. R. CIV. P. 59(e) and D. CONN. L. CIV. R. 9(e). Plaintiffs cite as their basis for reconsideration the absence of discussion of *United Food Workers v. Brown Group*, 517 U.S. 544, 553, 116 S. Ct. 1529, 134 L. Ed. 2d 758 (1996), in the ruling dismissing their complaint for want of standing and/or Congressional authorization to bring suit to enforce the Worker Adjustment and Retraining Notification Act ("WARN Act"), 29 U.S.C. § 2101 *et seq.*, on behalf of or as a class representative of allegedly aggrieved citizens of their State.

In *United Food Workers*, 517 U.S. at 548, the Court analyzed the standing issue on the presumption that Congress granted unions the authority to sue as a representative of aggrieved employees based on its previous reading of the WARN Act in *North Star Steel Co. v. Thomas*, 515 U.S. 29, 31, 115 S. Ct. 1927, 132 L. Ed. 2d 27 (1995). Union authority was confirmed on the basis of the text of the notice provision, 29 U.S.C. § 2102, and the definition of "representative" in 29 U.S.C. §§ 159(a), 158(f) and 45 U.S.C. § 152. *United Food Workers*, 517 U.S. at 548.

Unlike the analysis in *United Food Workers*, the question here is not whether a union could, consistent with principles of association standing, be permitted to sue as the intent of Congress. *See United Food Workers*, 517 U.S. at 546. Instead, plaintiffs argue that the Congressional requirement that employers notify the State prior to plant closings or mass layoffs, 29 U.S.C. § 2102(a)(2), vests the State with standing to sue on behalf of aggrieved employees pursuant to 29 U.S.C. § 2104(a)(5). The argument defies the plain meaning of the WARN Act.

The WARN Act requires employers to provide notice of plant closing or mass layoffs (1) "to each representative of the affected employees . . . or, if there is no such representative at that time, to each affected employee," 29 U.S.C. § 2102(a)(1), and (2) "to the State or entity designated by the State to carry out rapid response activities under section 2864(a)(2)(A) of this title, and the chief elected official of the unit of local government within which such closing or layoff is to occur," 29 U.S.C. § 2102(a)(2). In a failure to provide adequate notice:

> *A person* seeking to enforce such liability, *including a representative of employees or a unit of local government aggrieved under paragraph (1) or (3)*, may sue either for such person or for other persons similarly situated, or both, in any district court of the United States for any district in which the violation is alleged to have occurred, or in which the employer transacts business.

29 U.S.C. § 2104(a)(5) (emphasis added).

Plaintiffs do not argue that they fit the definition of either "representative," *see* 29 U.S.C. §§ 159(a), 158(f) and 45 U.S.C. § 152, or "unit of local government," defined as "any general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers," 29 U.S.C. § 2101(a)(7). As stated in ruling on defendant's motion to dismiss, "[p]laintiffs are not a political subdivision of the State—they *are* the State." If plaintiffs are to

carry their burden of establishing standing to pursue a claim under the WARN Act, *see Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1982), they must account for the absence of reference to "State" in 29 U.S.C. § 2104(a)(5). This they do not and cannot do.

As noted above, the terms "representative," "unit of local government," and "State" are all found in the WARN Act. If it were the intent of Congress that the State was to be allowed to sue on behalf of citizens, it would have so provided by including the "State"in the text of 29 U.S.C. § 2104(a)(5). "[T]he more natural reading the statute's text, which would give effect to all of its provisions, always prevails over a mere suggestion to disregard or ignore duly enacted law as legislative oversight." *United Food Workers*, 517 U.S. at 550. Plaintiffs make no showing of a Congressional intent to confer standing on them to sue on behalf of aggrieved employees who are citizens of their State.

The motion for reconsideration (Doc. 34) is **granted**. However, for the reasons discussed above, the objection is overruled and the prior ruling is adhered to.

SO ORDERED.

Dated at New Haven, Connecticut, February ___, 2002.

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Peter C. Dorsey
United States District Judge